

**UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK**

ROBERT GORMAN,

Plaintiff,

-against-

EXPERIAN INFORMATION SOLUTIONS,
INC., EQUIFAX INFORMATION SERVICES,
INC., and HSBC MORTGAGE SERVICES,
INC.,

Defendants.

Civil Action No.: 07 CV 1846 (Patterson, J.)

ECF Case

**LOCAL CIVIL RULE 56.1 STATEMENT OF MATERIAL FACTS IN SUPPORT OF
DEFENDANT EXPERIAN INFORMATION SOLUTIONS, INC.'S
MOTION FOR SUMMARY JUDGMENT**

Pursuant to Local Civil Rule 56.1 Defendant Experian Information Solutions, Inc. ("Experian"), by its undersigned counsel, submits that the following are facts as to which there is no genuine issue to be tried, and that, as a consequence, they are entitled to summary judgment on all claims set forth in Plaintiff's Complaint. Copies of exhibits cited herein accompany the Declaration of A. Gregory Gibbs in Support of Defendant Experian's Motion for Summary Judgment, dated May 16, 2008 ("Gibbs Declaration").

FACTS

1. Plaintiff Robert Gorman obtained a primary mortgage loan on a property at address Daniel Burnham Court Apt. #710 in San Francisco, California in an amount of \$360,000 from Defendant HSBC Mortgage Services' predecessor-in-interest. See Ex. 1 to Gibbs Decl. (Pl.'s Resp. to Req. for Admis. ¶¶ 4, 5.)

2. Plaintiff obtained a secondary mortgage loan on the property at address Daniel Burnham Court Apt. #710 in San Francisco, California in an amount of \$90,000 from HSBC Mortgage Services' predecessor-in-interest. See id. (Pl.'s Resp. to Req. for Admis. ¶¶ 4, 6.)

3. Plaintiff did not pay the full amount of \$360,000 plus interest as scheduled in accordance with the terms of the \$360,000 primary mortgage agreement that Plaintiff had entered into HSBC Mortgage Services' predecessor-in-interest. See id. (Pl.'s Resp. to Req. for Admis. ¶ 15.)

4. Plaintiff did not pay the full amount of \$90,000 plus interest as scheduled in accordance with the terms of the \$90,000 second mortgage agreement that Plaintiff had entered into with HSBC Mortgage Services' predecessor-in-interest. See id. (Pl.'s Resp. to Req. for Admis. ¶ 16.)

5. Plaintiff could not continue making his mortgage payments on the property at 1 Daniel Burnham Court Apt. #710 in 2002. See id. (Pl.'s Resp. to Req. for Admis. ¶ 14.)

6. The property at 1 Daniel Burnham Court Apt. #710 was repossessed by the lender, HSBC Mortgage Services' predecessor-in-interest. See Ex. 2 to Gibbs Decl. (Def. Ex. G to Gorman Dep., EXP-GOR 124-134.)

7. The Grant Deed in Lieu of Foreclosure file on the 1 Daniel Burnham Court Apt. #710 property includes an Estoppel Affidavit executed by Plaintiff on June 6, 2002; the Grant Deed in Lieu of Foreclosure was received and stamped by the San Francisco County Assessor-Recorder's Office on June 26, 2002. See id.; see Ex. 3 to Gibbs Decl. (Gorman Dep. at 73:9-18.)

8. A Deed of Reconveyance on the 1 Daniel Burnham Court Apt. #710 property was executed on June 11, 2002 and received and stamped by the San Francisco County Assessor-Recorder's Office on June 26, 2002. See Ex. 4 to Gibbs Decl. (Pl.'s Ex. 12 to HSBC Dep.H235)

8. Plaintiff was still living at the 1 Daniel Burnham Court property without paying rent during 2002 until vacating the property in June 2002. See Ex. 5 to Gibbs Decl. (Gorman Dep. at 44:18-25, 72:9–73:4.)

9. Plaintiff contacted Experian by phone on or about December 19, 2002 to request a copy of his Credit Disclosure and received a copy of his Credit Disclosure dated December 19, 2002. See Ex. 1 to Gibbs Decl. (Pl.'s Resp. to Req. for Admis. ¶¶ 17-18.)

10. Plaintiff contacted Experian via the Internet on or about January 31, 2003 to request an investigation into his credit file and received a notice from Experian dated February 10, 2003 providing the results of Experian's investigation of Plaintiff's credit file. See id. (Pl.'s Resp. to Req. for Admis. ¶¶ 19-20.)

11. Plaintiff contacted Experian by phone on or about March 10, 2003 to request an investigation into this credit file and Plaintiff received an Experian investigation results notice dated March 20, 2003. See id. (Pl.'s Resp. to Req. for Admis. ¶¶ 21-22.)

12. Plaintiff did not contact Experian in 2003 or 2004 subsequent to receiving the Experian investigation results notice dated March 20, 2003. See id. (Pl.'s Resp. to Req. for Admis. ¶ 23.)

13. Plaintiff contacted Experian by telephone on or about February 11, 2005 to request a complimentary copy of his credit disclosure and received a copy of his credit disclosure dated February 11, 2005 from Experian. Plaintiff did not subsequently contact Experian in 2005. See id. (Pl.'s Resp. to Req. for Admis. ¶¶ 24-26.)

14. Plaintiff contacted Experian by telephone on or about July 19, 2006 to request a complimentary copy of his credit disclosure and received a copy of his credit disclosure dated July 19, 2006 from Experian. See id. (Pl.'s Resp. to Req. for Admis. ¶¶ 27-28.)

15. Plaintiff sent a letter by mail to Experian on or about August 31, 2006 and Plaintiff received an Experian investigation results notice dated September 8, 2006. See id. (Pl.'s Resp. to Req. for Admis. ¶¶ 29-30.)

16. Plaintiff did not communicate with Experian or send any additional documents to Experian upon receipt of Experian's investigation results notice dated September 8, 2006 until the filing of Plaintiff's Complaint. See id. (Pl.'s Resp. to Req. for Admis. ¶ 31.); Ex. 6 to Gibbs Decl. (Gorman Dep. at 100:19-101:7.)

17. Plaintiff was 30 days or more delinquent on payment of at least one student loan account in 2006. See Ex. 1 to Gibbs Decl. (Pl.'s Resp. to Req. for Admis. ¶ 11.)

18. Plaintiff was 30 days or more delinquent on payment of at least one student loan account in 2004. See id. (Pl.'s Resp. to Req. for Admis. ¶ 10.)

19. Plaintiff was 30 days or more delinquent on payment of at least one student loan account in 2003. See id. (Pl.'s Resp. to Req. for Admis. ¶ 9.)

20. Plaintiff was 30 days or more delinquent on payment of at least one student loan account in 2002. See id. (Pl.'s Resp. to Req. for Admis. ¶ 8.)

21. Plaintiff was 30 days or more delinquent on payment of an automobile loan in 2000. See id. (Pl.'s Resp. to Req. for Admis. ¶ 7.)

22. Plaintiff applied for a home mortgage loan with Pentagon Federal Credit Union (CredStar) in January 2007 and received a document which describes three credit report scores; this document does not indicate a denial or approval of the loan application. See Ex. 7 to Gibbs Decl.

23. Plaintiff applied for a home mortgage loan with USAA Federal Savings Bank in January 2007 and received a document which describes basis upon a credit report featuring a

score of 718 and presents a checked-box indicating the principal reason for denial of the loan application as due to "Foreclosure or Repossession." See Ex. 8 to Gibbs Decl.

24. Plaintiff applied for a first mortgage loan with United Community Bank Mortgage Services in January 2007 and received a document relating to a denial of the loan application, that does not identify any specific credit reporting agency or credit report as basis for the credit decision. This document provides as primary reason for the denial "delinquencies on past or present accounts." See Ex. 9 to Gibbs Decl.

25. Plaintiff has not sought or received medical, psychiatric or psychological care due to the events of this action. See Ex. 10 to Gibbs Decl. (Gorman Dep. 257:17-24; 123:13-25.)

26. Plaintiff has not taken any medication due to the events of this action. See id.

27. Plaintiff has admitted that he has no reason to believe that Experian acted with ill will. See Ex. 11 to Gibbs Decl. (Gorman Dep. 258:24-259:9.)

Dated: New York, New York
May 16, 2008

Respectfully Submitted,

By: /s/ A. Gregory Gibbs

A. Gregory Gibbs (AG 8407)

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